

*STEVENSON-WYDLER (15 U.S.C. 3710)*

COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

(hereinafter "CRADA")

BETWEEN Albany Research Center, DOE (hereinafter "ARC")

AND

\_\_\_\_\_ (hereinafter "Participant"),  
both being hereinafter jointly referred to as the "Parties."

**ARTICLE I: DEFINITIONS**

- A. "Government" means the Federal Government of the United States of America and agencies thereof.
- B. "DOE" means the Department of Energy, an agency of the Federal Government.
- C. "Generated Information" means information produced in the performance of this CRADA.
- D. "Proprietary Information" means information which embodies (i) trade secrets or (ii) commercial or financial information which is privileged or confidential under the Freedom of Information Act (5 U.S.C. 552 (b)(4)), either of which is developed at private expense outside of this CRADA and which is marked as Proprietary Information.
- E. "Protected CRADA Information" means Generated Information which is marked as being Protected CRADA Information by a Party to this CRADA and which would have been Proprietary Information had it been obtained from a non-Federal entity.
- F. "Subject Invention" means any invention of ARC or Participant conceived or first actually reduced to practice in the performance of work under this CRADA.
- G. "Intellectual Property" means Patents, Trademarks, Copyrights, Mask Works, Protected CRADA Information, and other forms of comparable property rights protected by Federal law and foreign counterparts, except trade secrets.
- H. "Trademark" means a distinctive mark, symbol, or emblem used in commerce by a producer or manufacturer to identify and distinguish its goods or services from those of others.
- I. "Service Mark" means a distinctive word, slogan, design, picture, symbol, or any combination thereof, used in commerce by a person to identify and distinguish its services from those of others.
- J. "Mask Work" means a series of related images, however fixed or encoded, having or representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip

product and in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

- K. “Background Intellectual Property” means the Intellectual Property identified by the Parties in Appendix A, Background Intellectual Property, which was in existence prior to or is first produced outside of this CRADA, except that in the case of inventions in those identified items, the inventions must have been conceived outside of this CRADA and not first actually reduced to practice under this CRADA to qualify as Background Intellectual Property.

[When the need for a foreign ownership, control, or influence (FOCI) review has been determined to exist and where Article X, Export Control, has been appropriately modified, the following definitions should be added:]

- M. “Foreign Interest” is defined as any of the following:

- (1) A foreign government or foreign government agency;
- (2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
- (3) Any form of business enterprise organized or incorporated under the laws of the United States, or a State or other jurisdiction within the United States, which is owned, controlled, or influenced by a foreign government, agency, firm, corporation or person; or
- (4) Any person who is not a U.S. citizen.

- N. “Foreign ownership, control, or influence (FOCI)” means the situation where the degree of ownership, control, or influence over a Participant by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material, as defined in 10 CFR Part 710, may result.

## ARTICLE II: STATEMENT OF WORK

The Statement of Work is attached as Appendix \_\_\_\_.

**[GENERAL GUIDANCE:** The CRADA must include a Statement of Work. The Statement of Work must include a technical description of the scope encompassed by the proposed CRADA, including tasks, the party responsible for the tasks, and a list of deliverables (reports, prototypes, etc.). The Statement of Work should also include who the principal investigators for each party will be; who will provide what funds, personnel, services, and property; who will do what reporting on the work; and procedures for interaction between the parties to accomplish the Statement of Work, which is the objective of the CRADA. **Any Proprietary Information included in the Statement of Work should be clearly marked. Proprietary Information must not be included in the Statement of Work unless the parties consider it absolutely necessary to define the work. The name of the Participant cannot be considered proprietary.]**

### ARTICLE III: TERM, FUNDING AND COSTS

- A. The effective date of this CRADA shall be the date on which it is signed by the last of the Parties. The work to be performed under this CRADA shall be completed within \_\_\_\_\_ months/years from the effective date.
- B. The Participant's estimated contribution is \$ \_\_\_\_\_. [\*if applicable: The Government's estimated contribution is \$ \_\_\_\_\_, subject to available funding.]
- C. Neither Party shall have an obligation to continue or complete performance of its work at a contribution in excess of its estimated contribution as contained in Article III.B, above, including any subsequent amendment.
- D. Each Party agrees to provide at least 30 days' notice to the other Party if the actual cost to complete performance will exceed its estimated cost.
- E. Funding provision:

**OPTION 1:** Recommended provision to be used for most Participants, where the work is **greater than \$25,000 and will last longer than 90 days**. Advance payments in this option are to be calculated on a 90-day basis.

*The Participant shall provide ARC sufficient advance funds to maintain approximately a 90-day advance of funds during the entire period of work. No work will begin before the receipt of a cash advance. Failure of the Participant to provide the necessary advance funding is cause for termination of the CRADA.*

**OPTION 2: Where the Participant's contribution in direct funds to ARC is \$25,000 or less or where the work will be completed in 90 days or less.**

*The Participant shall provide ARC full funding prior to beginning work covered by those funds.*

**OPTION 3: For State or local governments** with a statute or other legal prohibition to advancing funds, **no advance funding provision is required**. Refer to the DOE Accounting Handbook, Chapter 13, paragraph 5b, for appropriate instructions for accounting procedures for this option.

**[GENERAL GUIDANCE:** In accordance with DOE O 483.1, DOE COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS, each CRADA must provide a benefit consistent with the program missions at the facility and the facility mission established by the Cognizant Secretarial Officer, and must involve collaboration between the CRADA Participant and the DOE laboratory.

Under current DOE policy, funds previously obtained from Federal sources can be used to finance a non-Federal Participant's share of a project. One of the purposes of CRADAs is to

stimulate private investment in collaborations with laboratories. It is important that the overall program be supported with significant private funds. However, DOE generally is unconcerned if the funds for the Participant's share of a specific CRADA come ultimately from some other Federal program, so long as the decision process for obtaining those funds precedes the final CRADA negotiation and the obtaining of those funds complies with the rules of that process. If the funds come from some other part of the Department, extra care must be taken to ensure that there is no real or apparent conflict of interest and that there is fairness of opportunity.]

#### **ARTICLE IV: PERSONAL PROPERTY**

All tangible personal property produced or acquired under this CRADA shall become the property of the Participant or the Government, depending upon whose funds were used to obtain it. Such property is identified in Appendix \_\_\_\_, Statement of Work. Personal property shall be disposed of as directed by the owner at the owner's expense. All jointly funded property shall be owned by the Government.

#### **ARTICLE V: DISCLAIMER**

THE GOVERNMENT AND THE PARTICIPANT MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS CRADA, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT. NEITHER THE GOVERNMENT, THE PARTICIPANT, NOR THE CONTRACTOR SHALL BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS CRADA.

#### **ARTICLE VI: PRODUCT LIABILITY**

Except for any liability resulting from any negligent acts or omissions of the Government, the Participant agrees to hold harmless the Government for all damages, costs, and expenses, including attorney's fees, arising from personal injury or property damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of the Participant, its assignees, or licensees, which was derived from the work performed under this CRADA.

#### **ARTICLE VII: OBLIGATIONS AS TO PROPRIETARY INFORMATION**

- A. Each Party agrees to not disclose Proprietary Information provided by another Party to anyone other than the CRADA Participant and ARC without written approval of the providing Party, except to Government employees who are subject to the statutory provisions against disclosure of confidential information set forth in the Trade Secrets Act (18 U.S.C. 1905).

- B. If Proprietary Information is orally disclosed to a Party, it shall be identified as such, orally, at the time of disclosure and confirmed in a written summary thereof, appropriately marked by the disclosing Party, within 30 days as being Proprietary Information.
- C. All Proprietary Information shall be returned to the provider thereof at the conclusion of this CRADA at the provider's expense.
- D. All Proprietary Information shall be protected for a period of [not to exceed 5] years from the effective date of this CRADA, unless such Proprietary Information becomes publicly known without the fault of the recipient, shall come into recipient's possession without breach by the recipient of any of the obligations set forth herein, or is independently developed by recipient's employees who did not have access to such Proprietary Information.

#### **ARTICLE VIII: OBLIGATIONS AS TO PROTECTED CRADA INFORMATION**

- A. Each Party may designate as Protected CRADA Information any Generated Information produced by its employees which meets the definition of Article I.F and, with the agreement of the other Party, so designate any Generated Information produced by the other Party's employees which meets the definition of Article I.F. All such designated Protected CRADA Information shall be appropriately marked.
- B. For a period of        [not to exceed 5] years from the date Protected CRADA Information is produced, the Parties agree not to further disclose such information except:
  - (1) as necessary to perform this CRADA;
  - (2) as provided in Article XI [REPORTS AND ABSTRACTS];
  - (3) as requested by Albany Research Center to be provided to other DOE facilities for use only at those DOE facilities with the same protection in place;
  - (4) to existing or potential licensees, affiliates, customers, or suppliers of the Parties in support of commercialization of the technology with the same protection in place. Disclosure of the Participant's Protected CRADA Information under this subparagraph shall only be done with the Participant's consent; or
  - (5) as mutually agreed by the Parties in advance.
- C. The obligations of paragraph B above shall end sooner for any Protected CRADA Information which shall become publicly known without fault of either Party, shall come into a Party's possession without breach by that Party of the obligations of paragraph B above, or shall be independently developed by a Party's employees who did not have access to the Protected CRADA Information.

## **ARTICLE IX: RIGHTS IN GENERATED INFORMATION**

The Parties and the Government shall have unlimited rights in all Generated Information produced or provided by a Party under this CRADA, except for information which is: (a) disclosed in a Subject Invention disclosure being considered for Patent protection, (b) protected as a Mask Work, or (c) marked as being Copyrighted or as Protected CRADA Information or as Proprietary Information.

## **ARTICLE X: EXPORT CONTROL**

THE PARTIES UNDERSTAND THAT MATERIALS AND INFORMATION RESULTING FROM THE PERFORMANCE OF THIS CRADA MAY BE SUBJECT TO EXPORT CONTROL LAWS AND THAT EACH PARTY IS RESPONSIBLE FOR ITS OWN COMPLIANCE WITH SUCH LAWS.

## **ARTICLE XI: REPORTS AND ABSTRACTS**

- A. The Parties agree to produce the following deliverables:
  - (1) an initial abstract suitable for public release at the time the CRADA is approved by DOE; and
  - (2) a final report, upon completion or termination of this CRADA, to include a list of subject inventions.
- B. The Parties acknowledge that ARC has the responsibility to provide the above information at the time of its completion to the DOE Office of Scientific and Technical Information.

## **ARTICLE XII: PRE-PUBLICATION REVIEW**

- A. The Parties agree to secure pre-publication approval from each other which shall not be unreasonably withheld or denied beyond \_\_\_\_ days.
- B. The Parties agree that neither will use the name of the other Party or its employees in any promotional activity, such as advertisements, with reference to any product or service resulting from this CRADA, without prior written approval of the other Party.

## **ARTICLE XIII: COPYRIGHTS**

For Generated Information, the Parties acknowledge that the Government has for itself and others acting on its behalf, a royalty-free, nontransferable, nonexclusive, irrevocable worldwide Copyright license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, all Copyrightable works produced in the performance of this CRADA, subject to the restrictions this CRADA places on publication of Proprietary Information and Protected CRADA Information.

#### **ARTICLE XIV: REPORTING SUBJECT INVENTIONS**

- A. The Parties agree to disclose to each other each Subject Invention which may be patentable or otherwise protectable under the Patent Act. The Parties agree that ARC and the Participant will disclose their respective Subject Inventions to DOE and each other within two (2) months after the inventor first discloses the Subject Invention in writing to the person(s) responsible for Patent matters of the disclosing Party.
- B. These disclosures should be in sufficiently complete technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, and operation of the Subject Invention. The disclosure shall also identify any known actual or potential statutory bars; i.e., printed publications describing the Subject Invention or the public use or “on sale” of the Subject Invention in this country. The Parties further agree to disclose to each other any subsequently known actual or potential statutory bar that occurs for a Subject Invention disclosed but for which a Patent application has not been filed. All Subject Invention disclosures shall be marked as confidential under 35 U.S.C. 205.

#### **ARTICLE XV: TITLE TO SUBJECT INVENTIONS**

Wherein DOE has granted the Participant the right to elect to retain title to their respective Subject Inventions, and wherein the Participant has the option to choose an exclusive license, for reasonable compensation, for a pre-negotiated field of use to the Subject Inventions,

- A. The Parties acknowledge that DOE may obtain title to each Subject Invention reported under Article XIV for which a Patent application or applications are not filed pursuant to Article XVI and for which any issued Patents are not maintained by any Party to this CRADA.
- B. The Parties acknowledge that the Government retains a nonexclusive, nontransferable, irrevocable, paid-up license to practice or to have practiced for or on behalf of the United States every Subject Invention under this CRADA throughout the world. The Parties agree to execute a Confirmatory License to affirm the Government’s retained license.

#### **ARTICLE XVI: FILING PATENT APPLICATIONS**

- A. If the Participant is assigned or elects to take title in any Subject Inventions under Article XV above, the Participant shall have the first opportunity to file U.S. and foreign patent applications; but if the Participant does not file such applications within twelve (12) months after disclosure or 60 days prior to any statutory bar to patentability, whichever is earlier, then the Government may file patent applications and the Participant shall convey title in such Subject Inventions to the Government.
- B. If the Participant does not desire to file a patent application in any country in which it has a right to file for any Subject Invention, it shall notify DOE Intellectual Property Counsel in writing of such negative intent within nine (9) months after the initial disclosure of such invention but not later than 60 days prior to the time when any statutory bar might

foreclose filing of a U.S. patent application. The Participant shall have ten (10) months after filing a U.S. patent application to file corresponding applications in foreign jurisdictions or to notify DOE Patent Counsel of its intent not file in such foreign jurisdictions.

#### **ARTICLE XVII: COST OF INTELLECTUAL PROPERTY PROTECTION**

Each Party shall be responsible for payment of all costs relating to Copyright, Trademark, and Mask Work filing; U.S. and foreign Patent application filing and prosecution; and all costs relating to maintenance fees for U.S. and foreign Patents hereunder which are solely owned by that Party. The costs of jointly owned intellectual property shall be paid for jointly and equally.

#### **ARTICLE XVIII: REPORTS OF INTELLECTUAL PROPERTY USE**

The Participant agrees to submit, for a period of \_\_\_\_\_ years from the date of termination or completion of this CRADA and upon request of DOE, a nonproprietary report no more frequently than annually on efforts to utilize any Intellectual Property arising under the CRADA.

#### **ARTICLE XIX: DOE MARCH-IN RIGHTS**

The Parties acknowledge that DOE has certain march-in rights to any Subject Inventions in accordance with 48 CFR 27.304-1(g) and 15 U.S.C. 3710a(b)(1)(B) and (C).

#### **ARTICLE XX: U.S. COMPETITIVENESS**

The Parties agree that a purpose of this CRADA is to provide substantial benefit to the U.S. economy.

A. In exchange for the benefits received under this CRADA, the Participant therefore agrees to the following:

(1) Products embodying Intellectual Property developed under this CRADA shall be substantially manufactured in the United States, and

(2) Processes, services, and improvements thereof which are covered by Intellectual Property developed under this CRADA shall be incorporated into the Participant's manufacturing facilities in the United States either prior to or simultaneously with implementation outside the United States. Such processes, services, and improvements, when implemented outside the United States, shall not result in reduction of the use of the same processes, services, or improvements in the United States.

#### **ARTICLE XXI: FORCE MAJEURE**

No failure or omission by Albany Research Center or the Participant in the performance of any obligation under this CRADA shall be deemed a breach of this CRADA or create any liability if the same shall arise from any cause or causes beyond the control of Albany Research Center or



the Participant, including but not limited to the following, which, for the purpose of this CRADA, shall be regarded as beyond the control of the Party in question: Acts of God, acts or omissions of any government or agency thereof, compliance with requirements, rules, regulations, or orders of any governmental authority or any office, department, agency, or instrumentality thereof, fire, storm, flood, earthquake, accident, acts of the public enemy, war, rebellion, insurrection, riot, sabotage, invasion, quarantine, restriction, transportation embargoes, or failures or delays in transportation.

## **ARTICLE XXII: NOTICES**

A. Any communications required by this CRADA, if given by postage prepaid first class U.S. Mail or other verifiable means addressed to the Party to receive the communication, shall be deemed made as of the day of receipt of such communication by the addressee, or on the date given if by verified facsimile. Address changes shall be given in accordance with this article and shall be effective thereafter. All such communications, to be considered effective, shall include the number of this CRADA.

B. The addresses, telephone numbers, and facsimile numbers for the Parties are as follows:

(1) For Albany Research Center:

Name:  
1450 Queen Avenue, SW  
Albany, OR 93721  
Ph:  
FAX:  
Email:

(2) For Participant:

Name:  
Street Address  
City, State, Zip  
Country (if not US)  
Ph:  
FAX:  
Email:

## **ARTICLE XXIII: DISPUTES**

The Parties shall attempt to jointly resolve all disputes arising from this CRADA. If the Parties are unable to jointly resolve a dispute within a reasonable period of time, they agree to follow the dispute resolution process set forth in Appendix \_\_\_\_\_. To the extent that there is no applicable U.S. Federal law, this CRADA and performance thereunder shall be governed by the law of the State of Oregon, without reference to that state's conflict of laws provisions.

#### **ARTICLE XXIV: ENTIRE CRADA AND MODIFICATIONS**

- A. This CRADA with its appendixes contains the entire agreement between the Parties with respect to the subject matter hereof, and all prior representations or agreements relating hereto have been merged into this document and are thus superseded in totality by this CRADA. This CRADA shall not be effective until approved by DOE.
- B. Any agreement to materially change any terms or conditions of this CRADA or the appendixes shall be valid only if the change is made in writing, executed by the Parties hereto, and approved by DOE.

#### **ARTICLE XXV: TERMINATION**

This CRADA may be terminated by either Party upon 30 days written notice to the other Party. This CRADA may also be terminated by the Contractor in the event of failure by the Participant to provide the necessary advance funding, as agreed in Article III.

In the event of termination by either Party, each Party shall be responsible for its share of the costs incurred through the effective date of termination, as well as its share of the costs incurred after the effective date of termination, and which are related to the termination.

FOR PARTICIPANT:

By \_\_\_\_\_

Title \_\_\_\_\_

Mailing Address

\_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

FOR U.S. DEPARTMENT OF ENERGY:

By \_\_\_\_\_

Title Research Director \_\_\_\_\_

Date \_\_\_\_\_

**Appendix \_\_\_\_\_**  
**Statement of Work**  
**From \_\_\_\_\_ to \_\_\_\_\_**  
**Cooperative Research & Development Agreement**  
**Between**  
**United States Department of Energy's Albany Research Center (ARC)**  
**And**  
**(Participant)**

**Principal Investigator for ARC:**  
**Principal Investigator for Participant:**

**\*Objective:**

**\*Tasks:**

**\*Deliverables:**

\*Note: who will provide what funds, personnel, services, and property; who will do what reporting; and what will be the procedures for interaction between the parties to accomplish this.

